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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: ET Docket No. 97-157

Dear Ms. Salas:

On behalf of Davis Television Fairmont, LLC, applicant for a construction permit for a new television broadcast station to operate on Channel 66 at Fairmont, West Virginia, I am transmitting herewith an original and eleven copies of its Reply to Opposition to Petition for Reconsideration in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned counsel.

Very truly yours,



Ross G. Greenberg

RGG:rg
Enclosures

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BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C. 20554

In the Matter of

Reallocation of Television Channels
 60-69, the 746-806 MHZ Band

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: The Commission

**DAVIS TELEVISION FAIRMONT, LLC'S REPLY TO
 OPPOSITION TO PETITION FOR RECONSIDERATION**

Davis Television Fairmont, LLC ("Davis"), applicant for a construction permit for a new television broadcast station to operate on Channel 66 at Fairmont, West Virginia (FCC File No. BPCT-960920IY), hereby submits the following Reply to the Opposition to Petitions for Reconsideration (the "Opposition") filed by the Association of Public-Safety Communications Officials-International, Inc. ("APCO") in response to, inter alia, Davis' March 12, 1998, Petition for Reconsideration (the "Petition") in the above-captioned proceeding. Davis asked the Commission to reconsider its Report and Order, adopted December 31, 1997, and released January 6, 1998, 63 Fed. Reg. 6669 (1998) (the "Report and Order"), in this proceeding.^{1/}

In its Petition, Davis urged the Commission to take steps to preserve applications already on file for Channel 60-69 allotments like Davis' and advocated the greatest degree of flexibility possible in finding ways to protect these applicants. Davis asserted its belief that all timely-filed

^{1/} The time for filing oppositions expired on April 6, 1998. Accordingly, this Reply is timely filed. 47 C.F.R. §§ 1.429(f),(g), 1.4(h) (1997).

applications for channels between Channels 60-69 are entitled to maximum flexibility in the processing and granting of their applications, within the reasonable confines of the public interest. Davis went on to set forth a scheme that satisfies the goals and requirements of the Commission while affording Davis an opportunity to bring new television service, a first local service, to the community of Fairmont.

APCO's Opposition raises arguments relating solely to the channels reallocated for public safety in the 746-806 MHz band, Channels 63, 64, 68 and 69. However, as stated above, Davis' application concerns Channel 66, a channel reallocated for commercial services. Nothing in APCO's Opposition addresses the particularized relief requested by Davis. APCO's Opposition never addresses Davis' contention that the relief it requests is consistent with the settlement agreement it has presented to the Commission and that such relief is entirely consistent with the mandate of the Balanced Budget Act of 1997 and its legislative history, under which the Commission was directed by Congress to waive its rules in order to permit the effectuation of such settlement agreements entered into by February 1, 1998.

It should also be pointed out that the Commission has made significant policy changes that greatly brighten the digital future of new analog stations whose construction permits are granted after April 3, 1997. The Commission had initially decided to not authorize additional new full service analog television stations on Channels 60-69, in part because new applications for analog stations would have no paired allotment for a DTV channel and would be required to cease operations at the end of the DTV transition period. Report and Order at ¶ 40. However, as reported in the Memorandum Opinion and Order on Reconsideration of the Fifth Report and

Order In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, FCC 98-23, released February 23, 1998 (the “Reconsideration MO&O”), the Commission has decided to allow such post-April 3, 1997, NTSC permittees various alternative ways to convert to DTV, finding that allowing these NTSC applicants to participate in the conversion to DTV will serve the public interest. Reconsideration MO&O at ¶ 11-16. This is precisely the type of change and flexible attitude which Davis is asking the Commission to adopt in this proceeding, all with an eye toward maximizing the benefits of competition which ultimately flow to the public.


Davis reiterates its belief that there is no adequate public interest reason for placing Channel 66 at Fairmont on the edge of extinction. To the contrary, there are compelling reasons why the channel should be preserved. Some measure of additional flexibility on the Commission’s part is all that is required. Davis has suggested alternatives that can preserve this important new, first local, over-the-air television service. APCO’s Opposition is wholly inapposite to the arguments advanced in Davis’ Petition and should not impact the Commission’s

consideration of Davis's Petition. The substantial public interest benefits of Davis' solution clearly outweigh the minimal costs, and Davis again respectfully urges the Commission to grant the requested relief it has requested.

Respectfully submitted,

DAVIS TELEVISION FAIRMONT, LLC

By:


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April 21, 1998

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Certificate of Service


I, Deadra Y. Echols, hereby certify that a true and correct copy of the foregoing *Reply to Opposition to Petition for Reconsideration* was sent by first-class postage prepaid mail this 21st day of April, 1998, to the following:

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